

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LINA YANNI,

Plaintiff,

-against-

THE UNITED STATES DEPARTMENT OF THE  
TREASURY INTERNAL REVENUE SERVICE,

Defendant.

COMPLAINT

Case No.

Jury Trial: ☐ yes ☒ no

FILED  
U.S. DISTRICT COURT  
2007 DEC - 7 PM 2:02  
S.D. OF N.Y. W.P.

-----X  
1. This is an action brought under the Internal Revenue Code to obtain a refund for the overpayment by Plaintiff of Federal gift taxes.

2. This court has jurisdiction over this action pursuant to USC § 1331.

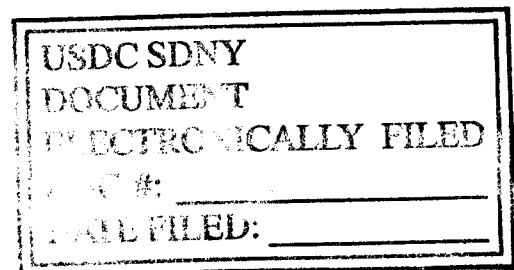
3. Venue is proper in this district pursuant to USC § 1396.

4. Plaintiff is a resident of the County of Westchester and State of New York.

5. Defendant Department of the Treasury Internal Revenue Service ("IRS") is an agency of the United States.

6. On or about October 21, 2004 plaintiff filed with defendant Form 709 United States Gift Tax Return for calendar year 2003 and sought a refund of gift taxes previously paid in the sum of \$128,764.00 together with applicable interest.

7. On or about December 9, 2005 defendant IRS notified plaintiff that plaintiff's claim for a refund was being disallowed, allegedly for not meeting the guidelines of Internal Revenue Code 6511(a).



8. On or about January 6, 2006 plaintiff notified defendant that plaintiff was administratively appealing the disallowance of the claim.

9. The appeals office of defendant IRS reviewed the claim of plaintiff and on or about December 18, 2006 advised the attorney for plaintiff that it was not reconsidering its disallowance of plaintiff's claim.

10. The claim for a refund is the result of gift taxes paid by plaintiff in connection with the United States Gift Tax Return for calendar year 1988 in the total sum of \$129,342.20 less gift tax owed in 2003 in the sum of \$578.00 resulting in a net overpayment of \$128,764.00. A copy of the gift tax return for 2003 and schedules filed on or about October 21, 2004 are collectively annexed hereto as Exhibit "A".

11. Plaintiff is entitled to a refund pursuant to Internal Revenue Code Section 2505(a) which for calendar years in and after 2002 increased the unified gift credit to \$1,000,000.00 from the \$600,000.00 unified gift credit that was in effect in 1988 when plaintiff paid the additional gift taxes.

12. Internal Revenue Code Section 2505(a) requires as an adjustment to the unified gift credit a calculation of gifts made in all prior tax periods and likewise requires a refund to the extent an overpayment of gift taxes has been made on a cumulative basis for all prior tax periods.

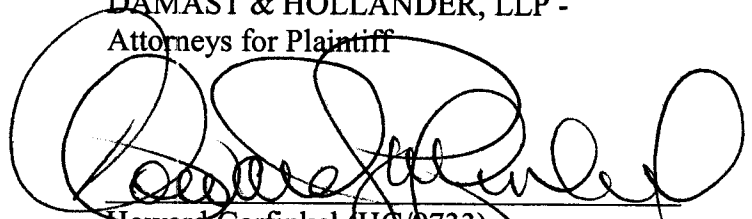
13. Plaintiff has exhausted its administrative remedies with defendant IRS.

WHEREFORE, plaintiff prays that this court:

1. Takes jurisdiction of this cause;
2. Orders defendant to refund to plaintiff the sum of \$128,764.00 together with applicable statutory interest;
3. Awards plaintiff her reasonable costs of litigation including attorney's fees;
4. Grants plaintiff such other and further relief as to this court may seem just, proper and equitable.

Dated: December 7, 2007

LAUTERBACH GARFINKEL  
DAMAST & HOLLANDER, LLP -  
Attorneys for Plaintiff



Howard Garfinkel (HC/9733)  
35 East Grassy Sprain Road, Suite 301  
Yonkers, New York 10710  
(914) 779-2211



Form **709****United States Gift (and Generation-Skipping Transfer) Tax Return**

OMB No. 1545-0020

Department of the Treasury  
Internal Revenue Service

(For gifts made during calendar year 2003)

**2003**

▶ See separate instructions.

Part 1-General Information

1 Donor's first name and middle initial LINA	2 Donor's last name YANNI	3 Donor's social security number 066-56-2165
4 Address (number, street, and apartment number) 12 Fawn Lane		5 Legal residence (domicile) New York
6 City, state, and ZIP code Armonk NY 10504		7 Citizenship USA
8 If the donor died during the year, check here <input type="checkbox"/> and enter date of death		Yes No
9 If you received an extension of time to file this Form 709, check here <input type="checkbox"/> and attach the Form 4868, 2688, 2350, or extension letter		
10 Enter the total number of donees listed on Schedule A—count each person only once. ▶ 7		
11 a Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 11b		X
11 b If the answer to line 11a is "Yes," has your address changed since you last filed Form 709 (or 709-A)?		X
12 Gifts by husband or wife to third parties.—Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (See instructions.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below. If the answer is "No," skip lines 13-18 and go to Schedule A.)		
13 Name of consenting spouse		14 SSN
15 Were you married to one another during the entire calendar year? (see instructions)		
16 If the answer to 15 is "No," check whether <input type="checkbox"/> married <input type="checkbox"/> divorced or <input type="checkbox"/> widowed, and give date ▶		
17 Will a gift tax return for this year be filed by your spouse? (If "Yes," mail both returns in the same envelope.)		
18 Consent of Spouse—I consent to have the gifts (and generation-skipping transfers) made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.		

Consenting spouse's signature ▶

Date ▶

Part 2-Tax Computation

1 Enter the amount from Schedule A, Part 4, line 11	1	0
2 Enter the amount from Schedule B, line 3	2	1,001,409
3 Total taxable gifts (add lines 1 and 2)	3	1,001,409
4 Tax computed on amount on line 3 (see Table for Computing Tax in separate instructions)	4	346,378
5 Tax computed on amount on line 2 (see Table for Computing Tax in separate instructions)	5	346,378
6 Balance (subtract line 5 from line 4)	6	0
7 Maximum unified credit (nonresident aliens, see instructions)	7	345,800 00
8 Enter the unified credit against tax allowable for all prior periods (from Sch. B, line 1, col. C)	8	345,800
9 Balance (subtract line 8 from line 7)	9	0
10 Enter 20% (.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977 (see instructions)	10	
11 Balance (subtract line 10 from line 9)	11	0
12 Unified credit (enter the smaller of line 6 or line 11)	12	0
13 Credit for foreign gift taxes (see instructions)	13	
14 Total credits (add lines 12 and 13)	14	0
15 Balance (subtract line 14 from line 6) (do not enter less than zero)	15	0
16 Generation-skipping transfer taxes (from Schedule C, Part 3, col. H, Total)	16	0
17 Total tax (add lines 15 and 16)	17	0
18 Gift and generation-skipping transfer taxes prepaid with extension of time to file	18	128,764
19 If line 18 is less than line 17, enter balance due (see instructions)	19	0
20 If line 18 is greater than line 17, enter amount to be refunded	20	128,764

Sign Here

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.

Signature of donor *Lina Yanni*Date *September 28, 04*

Paid Preparer's Use Only

Preparer's signature

*[Signature]*

Date

*Oct. 15, 04*Check if self-employed ☐

Firm's name (or yours if self-employed), address, and ZIP code

Lauterbach Garfinkel Damast & Hollander, LLP, 35 East Grassy Sprain Rd - #301  
Yonkers, NY 10710

Phone no. ▶ 914-779-2211

EXHIBIT "A"

Form 709 (2003)

LINA Y,

066-56-2165

Page 2

**SCHEDULE A** **Computation of Taxable Gifts** (Including Transfers in Trust) (see instructions)**A** Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," see instructions . . . . . Yes ☒ No ☐**B** ☐ Check here if you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified state tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.**Part 1—Gifts Subject Only to Gift Tax.** Gifts less political organization, medical, and educational exclusions—see instructions

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no.	C	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter ½ of column F	H Net transfer (subtract col. G from col. F)
1	136 West 74th Street, LLC  Employer ID No. of Trust: 13-7225657 SEE ANNEXED SCHEDULE "1"			12/17/2003	74,998	0	74,998
						0	0
						0	0
						0	0
						0	0
						0	0

Gifts made by spouse—complete only if you are splitting gifts with your spouse and he/she also made gifts.

						0	0
						0	0
						0	0
						0	0
						0	0
						0	0

Total of Part 1 (add amounts from Part 1, column H) . . . . . ▶ 74,998

**Part 2—Direct Skips**—gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no.	C 2632(b) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter ½ of column F	H Net transfer (subtract col. G from col. F)
1						0	0
						0	0
						0	0
						0	0
						0	0
						0	0

Gifts made by spouse—complete only if you are splitting gifts with your spouse and he/she also made gifts.

						0	0
						0	0
						0	0
						0	0
						0	0
						0	0

Total of Part 2 (add amounts from Part 2, column H) . . . . . ▶ 0

**Part 3—Indirect Skips**—gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no.	C 2632(c) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter ½ of column F	H Net transfer (subtract col. G from col. F)
1						0	0
						0	0
						0	0
						0	0
						0	0
						0	0

Gifts made by spouse—complete only if you are splitting gifts with your spouse and he/she also made gifts.

						0	0
						0	0
						0	0
						0	0
						0	0
						0	0

Total of Part 3 (add amounts from Part 3, column H) . . . . . ▶ 0

(If more space is needed, attach additional sheets of same size.)

Form 709 (2003)

Form 709 (2003)

LINA Y.

066-56-2165

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**Part 4—Taxable Gift Reconciliation**

1	Total value of gifts of donor (add totals from column H of Parts 1, 2, and 3)	1	74,998
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	77,000
3	Total included amount of gifts (subtract line 2 from line 1)	3	0
<b>Deductions (see instructions)</b>			
4	Gifts of interests to spouse for which a marital deduction will be claimed, based on items _____ of Schedule A	4	
5	Exclusions attributable to gifts on line 4	5	
6	Marital deduction—subtract line 5 from line 4	6	0
7	Charitable deduction, based on items _____ less exclusions	7	
8	Total deductions—add lines 6 and 7	8	0
9	Subtract line 8 from line 3	9	0
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule C, Part 3, col. H, Total)	10	0
11	Taxable gifts (add lines 9 and 10). Enter here and on line 1 of the Tax Computation on page 1	11	0

**SCHEDULE A Computation of Taxable Gifts (continued)****12 Terminable Interest (QTIP) Marital Deduction.** (See instructions for line 4 of Schedule A.)

If a trust (or other property) meets the requirements of qualified terminable interest property under section 2523(f), and

a. The trust (or other property) is listed on Schedule A, and

b. The value of the trust (or other property) is entered in whole or in part as a deduction on line 4, Part 4 of Schedule A, then the donor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2523(f).

If less than the entire value of the trust (or other property) that the donor has included in Parts 1 and 3 of Schedule A is entered as a deduction on line 4, the donor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted on line 6 of Part 4, Schedule A. The denominator is equal to the total value of the trust (or other property) listed in Parts 1 and 3 of Schedule A.

If you make the QTIP election (see instructions for line 4 of Schedule A), the terminable interest property involved will be included in your spouse's gross estate upon his or her death (section 2044). If your spouse disposes (by gift or otherwise) of all or part of the qualifying life income interest, he or she will be considered to have made a transfer of the entire property that is subject to the gift tax (see Transfer of Certain Life Estates on page 4 of the instructions).

**13 Election Out of QTIP Treatment of Annuities**

☐ Check here if you elect under section 2523(f)(6) NOT to treat as qualified terminable interest property any joint and survivor annuities that are reported on Schedule A and would otherwise be treated as qualified terminable interest property under section 2523(f). (See instructions.)

Enter the item numbers (from Schedule A) for the annuities for which you are making this election ►

**SCHEDULE B Gifts From Prior Periods**

If you answered "Yes" on line 11a of page 1, Part 1, see the instructions for completing Schedule B. If you answered "No," skip to the Tax Computation on page 1 (or Schedule C, if applicable).

A Calendar year or calendar quarter (see instructions)	B Internal Revenue office where prior return was filed	C Amount of unified credit against gift tax for periods after December 31, 1976	D Amount of specific exemption for prior periods ending before January 1, 1977	E Amount of taxable gifts
1988	Holtsville, New York	319,555		932,704
1999	Holtsville, New York	0		0
2000	Holtsville, New York	26,823		68,705
2001	Holtsville, New York	0		0
2002	Holtsville, New York	0		0
1 Totals for prior periods		1 346,378	0	1,001,409
2 Amount, if any, by which total specific exemption, line 1, column D, is more than \$30,000		2	0	
3 Total amount of taxable gifts for prior periods (add amount, column E, line 1, and amount, if any, on line 2). (Enter here and on line 2 of the Tax Computation on page 1.)		3	1,001,409	

(If more space is needed, attach additional sheets of same size.)

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Form 709 (2003)

LINA YANN

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**SCHEDULE C Computation of Generation-Skipping Transfer Tax**

**Note:** *Inter vivos direct skips that are completely excluded by the GST exemption must still be fully reported (including value and exemptions claimed) on Schedule C.*

**Part 1—Generation-Skipping Transfers**

A Item No. (from Schedule A, Part 2, col. A)	B Value (from Schedule A, Part 2, col. H)	C Nontaxable portion of transfer	D Net Transfer (subtract col. C from col. B)
1	0		0
	0		0
	0		0
	0		0
	0		0
	0		0
	0		0
<b>Gifts made by spouse (for gift splitting only)</b>			
	0		0
	0		0
	0		0
	0		0
	0		0
	0		0

**Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election**Check box ☐ if you are making a section 2652(a)(3) (special QTIP) election (see instructions)

Enter the item numbers (from Schedule A) of the gifts for which you are making this election

1	Maximum allowable exemption (see instructions)	1	1,120,000
2	Total exemption used for periods before filing this return	2	
3	Exemption available for this return (subtract line 2 from line 1)	3	1,120,000
4	Exemption claimed on this return (from Part 3, col. C total, below)	4	0
5	Allocation of exemption to transfers reported on Schedule A, Part 3	5	
6	Exemption allocated to transfers not shown on line 4 or 5, above. <b>You must attach a Notice of Allocation.</b> (See instructions.)	6	
7	Add lines 4, 5, and 6	7	0
8	Exemption available for future transfers (subtract line 7 from line 3)	8	1,120,000

**Part 3—Tax Computation**

A Item No. (from Schedule C, Part 1)	B Net transfer (from Schedule C, Part 1, col. D)	C GST Exemption Allocated	D Divide col. C by col. B	E Inclusion Ratio (subtract col. D from 1.000)	F Maximum Estate Tax Rate	G Applicable Rate (multiply col. E by col. F)	H Generation-Skipping Transfer Tax (multiply col. B by col. G)
1	0		0.000	1.000	0.49	0.490	0
2	0		0.000	1.000	0.49	0.490	0
3	0		0.000	1.000	0.49	0.490	0
4	0		0.000	1.000	0.49	0.490	0
5	0		0.000	1.000	0.49	0.490	0
6	0		0.000	1.000	0.49	0.490	0
			0.000	1.000	0.49	0.490	0
			0.000	1.000	0.49	0.490	0
			0.000	1.000	0.49	0.490	0
			0.000	1.000	0.49	0.490	0
			0.000	1.000	0.49	0.490	0
			0.000	1.000	0.49	0.490	0
			0.000	1.000	0.49	0.490	0
			0.000	1.000	0.49	0.490	0

Total exemption claimed. Enter here and on line 4, Part 2, above. May not exceed line 3, Part 2, above

**Total generation-skipping transfer tax.** Enter here, on line 10 of Schedule A, Part 4, and on line 16 of the Tax Computation

0 on page 1

0

(If more space is needed, attach additional sheets of same size.)

Form 709 (2003)



**SCHEDULE A TO FORM 709 - UNITED STATES GIFT TAX RETURN - 2003**

DONOR: LINA YANNI  
 Social Security #: 066-56-2165

**Part 1 - Gifts Subject Only to Gift Tax**

<u>Donee</u>	<u>Relationship</u>	<u>Gift</u>	<u>Value of Gift</u>
ROSEANNE YANNI (formerly known as ROSEANNE YANNI-FEBBO) 11 Wampus Lake Drive Armonk, New York 10504	Daughter	4.375 units in the limited liability company known as 136 West 74 <sup>th</sup> Street, LLC made on December 17, 2003	\$ 10,714.00
THE LINA YANNI IRREVOCABLE TRUST DATED DECEMBER 28, 1999 GIFT MADE FOR THE BENEFIT OF DONOR'S GRANDSON, DOMINIC JOHN FEBBO	Irrevocable Trust of Donor	4.375 units in the limited liability company known as 136 West 74 <sup>th</sup> Street, LLC made on December 17, 2003	\$ 10,714.00
THE LINA YANNI IRREVOCABLE TRUST DATED DECEMBER 28, 1999 GIFT MADE FOR THE BENEFIT OF DONOR'S GRANDSON, JOHN CHRISTIAN FEBBO	Irrevocable Trust of Donor	4.375 units in the limited liability company known as 136 West 74 <sup>th</sup> Street, LLC made on December 17, 2003	\$ 10,714.00
THE LINA YANNI IRREVOCABLE TRUST DATED DECEMBER 28, 1999 GIFT MADE FOR THE BENEFIT OF DONOR'S GRANDDAUGHTER, SOPHIA ROSE FEBBO	Irrevocable Trust of Donor	4.375 units in the limited liability company known as 136 West 74 <sup>th</sup> Street, LLC made on December 17, 2003	\$ 10,714.00
ANTOINETTE YANNI- BONAVISO 12 Fawn Lane Armonk, New York 10504	Daughter	4.375 units in the limited liability company known as 136 West 74 <sup>th</sup> Street, LLC made on December 17, 2003	\$ 10,714.00
THE LINA YANNI IRREVOCABLE TRUST DATED DECEMBER 28, 1999 GIFT MADE FOR THE BENEFIT OF DONOR'S GRAND- DAUGHTER, LISA MARIA BONAVISO	Irrevocable Trust of Donor	4.375 units in the limited liability company known as 136 West 74 <sup>th</sup> Street, LLC made on December 17, 2003	\$ 10,714.00

**SCHEDULE A TO FORM 709 - UNITED STATES GIFT TAX RETURN - 2003** Continued

DONOR: LINA YANNI  
 Social Security #: 066-56-2165

**Part 1 - Gifts Subject Only to Gift Tax**

<u>Donee</u>	<u>Relationship</u>	<u>Gift</u>	<u>Value of Gift</u>
THE LINA YANNI IRREVOCABLE TRUST DATED DECEMBER 28, 1999 GIFT MADE FOR THE BENEFIT OF DONOR'S GRAND- DAUGHTER, FRANCESCA ANN BONAviso	Irrevocable Trust of Donor	4.375 units in the limited liability company known as 136 West 74 <sup>th</sup> Street, LLC made on December 17, 2003	\$ 10,714.00

**SCHEDULE "2" TO FORM 709 - UNITED STATES GIFT TAX RETURN - 2003**

DONOR:  
Social Security #:

LINA YANNI  
066-56-2165

Donor filed Form 709, United States Gift Tax Return for calendar year 1988 and paid the sum of \$117,004.56 in connection therewith. See attached Exhibit "A".

Said 1988 gift tax return was examined and as a result thereof Donor and the Internal Revenue Service agreed to an increase in tax of \$9,750.00 to which the additional sum of \$2,587.64 in interest was imposed and paid (total \$12,337.64). See attached Exhibit "B".

Accordingly, Donor has paid the following amounts in connection with gift tax for 1988:

March 30, 1989	\$117,004.56
June 13, 1991	<u>12,337.64</u>
	\$129,342.20

Based on the computed gift tax for 2002 in the sum of \$578.00 (i.e. the gift tax on the \$1,001,409.00 less the \$1,000,000.00 gift tax exemption), Donor is entitled to a refund in the sum of \$128,764.00.

(Rev. June 1985)

(Section 6019 of the Internal Revenue Code) (For gifts made after December 31, 1981, and before January 1, 1988)

OMB No. 1545-0020  
Expires 4-30-88Department of the Treasury  
Internal Revenue ServiceCalendar year 19 88

► For "Privacy Act" Notice, see the instructions for Form 1040.

Donor's first name and middle initial <b>LINA</b>	Donor's last name <b>YANNI</b>	Social security number <b>066-56-2165</b>
Address (number and street) <b>31 Durst Place</b>		Domicile <b>New York</b>
City, State, and ZIP code <b>Yonkers, New York 10704</b>		Citizenship <b>U.S.A.</b>

If the donor died during the year, check here ☐ and enter date of death \_\_\_\_\_, 19 \_\_\_\_

If you received an extension of time to file this Form 709, check here ☐ and attach the Form 4868, 2688, 2350 or extension letter. Yes No

If you (the donor) filed a previous Form 709 (or 709-A), has your address changed since the last Form 709 (or 709-A) was filed? Yes No

**A** Gifts by husband or wife to third parties.—Do you consent to have the gifts made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (See instructions.)

(If the answer is "Yes," the following information must be furnished and your spouse is to sign the consent shown below.  
If the answer is "No," skip lines 1-5 and go to Schedule A.)

1a Name of consenting spouse	1b Social security number
------------------------------	---------------------------

2 Were you married to one another during the entire calendar year? (see instructions) Yes No

3 If the answer to 2 is "No," check whether ☐ married ☐ divorced or ☐ widowed, and give date (see instructions) ► Yes No

4 Will a gift tax return for this calendar year be filed by your spouse? Yes No

5 Consent of Spouse—I consent to have the gifts made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.

Consenting spouse's signature ►

Date ►

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1 Enter the amount from Schedule A, line 13	907,704	00																
2 Enter the amount from Schedule B, line 3	-																	
3 Total taxable gifts (add lines 1 and 2)	907,704	00																
4 Tax computed on amount on line 3 (see Table A in separate instructions)	309,804	56																
5 Tax computed on amount on line 2 (see Table A in separate instructions)	-																	
6 Balance (subtract line 5 from line 4)	309,804	56																
7 Enter the unified credit from Table B (see instructions)	192,800	00																
8 Enter the unified credit against tax allowable for all prior periods (from Sch. B, line 1, col. (c))																		
9 Balance (subtract line 8 from line 7)	117,004	56																
10 Enter 20% of the amount allowed as specific exemption after September 8, 1975, and before January 1, 1977 (see instructions)																		
11 Balance (subtract line 10 from line 9)	117,004	56																
12 Unified credit (enter the smaller of line 6 or line 11)																		
13 Credit for foreign gift taxes (see instructions)																		
14 Total credits (add lines 12 and 13)																		
15 Balance (subtract line 14 from line 6) (do not enter less than zero)	117,004	56																
16 Gift taxes prepaid with extension of time to file																		
17 If line 16 is less than line 15, enter BALANCE DUE (see instructions)	117,004	56																
18 If line 16 is greater than line 15, enter AMOUNT TO BE REFUNDED																		

Please attach the necessary supplemental documents; see instructions.

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.

Donor's signature Lina Yanni Date ► March 30, 1989Preparer's signature (other than donor) Leon A. Lauterbach Date ► 3/30/89Preparer's address (other than donor) ►  
**LEON A. LAUTERBACH**  
**20 South Broadway, Yonkers, N.Y. 10701**

For Paperwork Reduction Act Notice, see page 1 of the separate instructions to this form.

Form 709 (Rev. 5-85)

EXHIBIT "A" TO SCHEDULE "2" OF FORM 709 FOR 2003



LINA YANNI  
ROSEANNE YANNI  
31 DURST PLACE  
YONKERS, N.Y. 10704

185

April 14 1989

$\frac{1-12}{210}$

Pay to the order of Internal Revenue Service \$ 117,004.<sup>56</sup>/<sub>xx</sub>  
One hundred seventeen thousand four and <sup>56</sup>/<sub>xx</sub> Dollars

**CHEMICAL BANK**

300 COLUMBUS AVENUE, NEW YORK, N.Y. 10023

For LINA YANNI 066-56-2165  
GIFT TAX

Roseanne Yanni

⑆021000128⑆ 085⑈284076⑈ 0185

Department of the Treasury  
P.O. Box 3100  
Church Street Station  
New York, New York 10008

Date: MAY - 9 1991

Tax Year Ended:  
12/31/88

Form Number:  
709 Gift

Person to Contact:  
F. Kearney

Contact Telephone Number:  
(212) 264-5020

▷ Lina Yanni  
c/o Leona Lauterbach, Esq.  
20 South Broadway  
Yonkers, New York 10701

— Dear Madam:

We have enclosed a copy of our report of examination of your return for the above year.

This report, which is for your information and files, reflects adjustments previously discussed with you. If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,



District Director

Enclosure:  
Examination Report



Department of the Treasury  
Internal Revenue Service  
HOLTSVILLE, NY 00501

Date of this notice: JUNE 10, 1991  
Taxpayer Identifying Number 066-56-2165  
Form: 709 Tax Period: DEC. 31, 1988



LINA YANNI  
%LEON A LAUTERBACH  
20 S BROADWAY ROOM 401  
YONKERS NY 10701

For assistance you may  
call us at:

732-0100 BX., MAN.  
596-3770 ST. ISLAND  
1-800-829-1040 OTHER NY

Or you may write to us at  
the address shown at the  
left. If you write, be  
sure to attach the bottom  
part of this notice.

# STATEMENT OF ADJUSTMENT TO YOUR ACCOUNT

BALANCE DUE ON ACCOUNT BEFORE ADJUSTMENT	\$ .00
ADJUSTMENT COMPUTATION	
TAX-INCREASE	\$9,750.00
INTEREST CHARGED	2,587.64
NET ADJUSTMENT CHARGE	12,337.64
BALANCE DUE	\$12,337.64

\$2,587.64 INTEREST - SEE ENCLOSED NOTICE, CODE 09  
PAYMENTS - SEE ENCLOSED NOTICE, CODE 16  
ADDITIONAL INTEREST CHARGES - SEE ENCLOSED NOTICE, CODE 19

To make sure that IRS employees give courteous responses and correct information to taxpayers, a second IRS employee sometimes listens in telephone calls.

Keep this part for your records

LAUTERBACH AND GARFINKEL  
COUNSELLORS AT LAW

EDWARD LAUTERBACH (1916-1958)  
LEON A. LAUTERBACH  
(MEMBER OF NEW YORK AND FLORIDA BARS)  
HOWARD GARFINKEL

20 SOUTH BROADWAY  
YONKERS, N. Y. 10701-3794  
(AREA CODE 914) 963-6688  
TELECOPIER 914-963-7537

April 24, 1991

ESTHER E. MILDNER

Internal Revenue Service  
Department of the Treasury  
P.O. Box 3100  
Church Street Station  
New York, New York 10008

Attention: Mr. Franklin R. Kearney  
Examination Division - Estate Tax

Re: Gift of Lina Yanni  
Tax Period: December 31, 1988

Dear Mr. Kearney:

We are enclosing herewith the Waiver of Restrictions on  
Assessment and Collection of Deficiency and Acceptance of  
Overassessment for the gift tax by our above named client.

Because I originally settled this matter with Mr. J. Schertzman  
approximately six months ago, I would appreciate it if the  
concluding phase of this matter can now be handled expeditiously  
since I must report the same on conclusion to the State of New  
York.

I want to thank you for your cooperation and courtesy.

Cordially,

LAUTERBACH and GARFINKEL

  
Leon A. Lauterbach

LAL:jz  
Enc.



Form 890  
(Rev. January 1985)**Waiver of Restrictions on Assessment and Collection  
of Deficiency and Acceptance of Overassessment —  
Estate and Gift Tax**

(Please see the instructions on the back of this form)

Date Received by  
Internal Revenue  
Service**Part 1. Consent to Assessment and Acceptance of Overassessment**

I consent to the immediate assessment and collection of any deficiencies (*increase in tax and penalties*) and accept any over-assessment (*decrease in tax and penalties*) shown below, plus any interest provided by law. I understand that by my signing this waiver, a petition to the United States Tax Court may not be made, unless additional deficiencies are determined.




~~Date of Death~~

Period Ending: December 31, 1988

Item	Increase	Decrease
Tax	\$9,750.00	
Penalty		
Total	\$9,750.00	

If the estate is required to file with the District Director of Internal Revenue evidence of payment of estate, inheritance, legacy, or succession taxes to any State or the District of Columbia, I understand that such evidence must be filed by — — — — —, or the credits for these taxes will not be allowed. I also agree to the assessment and collection of the increase in estate tax and penalties of \$ — — — — — based on the disallowed credits, plus interest figured to the 30th day after — — — — — or until this increase is assessed, whichever is earlier.

Estate of

Executor or Administrator	Sign here  By	Date
	Address	
Executor or Administrator	Sign here  By	Date
	Address	
Donor	Name LINA YANNI	Address 31 Durst Place Yonkers, New York 10704
Donor's Signature	Sign here  By <i>Lina Yanni</i>	Date 4/24/91

District  
Director

Leon A. Lauterbach, Esq.  
20 South Broadway  
Yonkers, New York 10701

Person to Contact: Franklin R. Kearney

Telephone Number: (212) 264-5020

Refer Reply to: E:E:5:1528:FK

Date: April 15, 1991

Re: Gift of Lina Yanni  
Tax Period: 8812

Dear Mr. Lauterbach:

Enclosed are the following:

1. Form 890 Waiver of Restrictions on Assessment and Collection of  
Deficiency and Acceptance of Overassessment - Estate and Gift Tax
2. Form 3231A Preliminary Statement
3. Form 3233 Report of Gift Tax Examination
4. Form 886A Explanation of Items

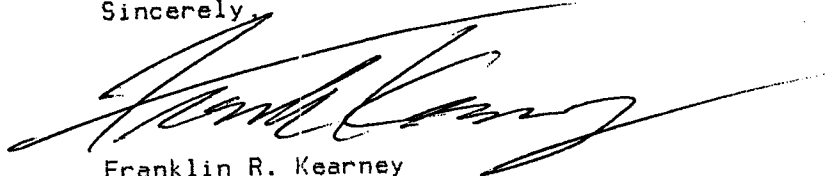
All of the forms are subject to review by our Review Staff.

If you have any questions, please call me at the above telephone number.

If you agree with these adjustments, please have the Donor sign form 890  
and return it to me.

Thank you for your cooperation.

Sincerely,



Franklin R. Kearney  
Examination Division  
Estate Tax

Enclosures

Form 3231A (Rev. August 1976) (CG)		Department of the Treasury - Internal Revenue Service <b>PRELIMINARY STATEMENT</b>		<input type="checkbox"/> Estate Tax <input checked="" type="checkbox"/> Gift Tax	
Name of Decedent or Donor Lina Yanni				Social Security Number 066-56-2165	
Statement of Tax Liability					
Gift Tax Year	Tax Previously Assessed	Correct Tax Liability	Increase (Decrease) In Tax	Penalties Increase (Decrease)	
1988	\$117,004.56	\$126,754.56	\$9,750.00		
<i>Changes - Subject to Review</i>					
Total	\$117,004.56	\$126,754.56	\$9,750.00		
Net Increase (Decrease) \$9,750.00		Agreement Secured <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Name of Person With Whom Findings Were Discussed Leon A. Lauterbach, Esq.	
Remarks The principal reason for changes is increase in the value of real estate.					

## Table of Contents:

Schedule 1 Report of Gift Tax Examination  
 Schedule 1A Explanation of Items

Examiner	Examining District	Date
Franklin R. Kearney	Manhattan	4/16/1991

Form 3231A (Rev. August 1976) (CG) PAGE 183

Form 3233 (Rev. June 1977) (CG)		Department of the Treasury - Internal Revenue Service REPORT OF GIFT TAX EXAMINATION		Schedule Number /
Donor Lina Yanni		Calendar Quarter Ending 1988		
Item		Shown on Return	Corrected	
1. Total gifts of donor		\$927,704.00	\$952,704.00	
2. Less amount attributable to spouse		\$0.00	\$0.00	
3. Balance		\$927,704.00	\$952,704.00	
4. Gifts of spouse to be included		\$0.00	\$0.00	
5. Total Gifts		\$927,704.00	\$952,704.00	
6. Less total exclusions		\$20,000.00	\$20,000.00	
7. Total included amount of gifts		\$907,704.00	\$932,704.00	
8. Deductions		////////////////////	////////////////////	
(a) Charitable gifts	On Return	\$0.00	////////////////////	
	Corrected	\$0.00	////////////////////	
(b) Marital deduction	On Return	\$0.00	////////////////////	
	Corrected	\$0.00	////////////////////	
9. Total deductions (Add amounts on lines 8(a) and (b))		\$0.00	\$0.00	
10. Amount of taxable gifts (Subtract the amount on line 9 from the amount on line 7.)		\$907,704.00	\$932,704.00	
11. Total taxable gifts for prior periods		\$0.00	\$0.00	
12. Total taxable gifts		\$907,704.00	\$932,704.00	
13. Tax computed on amount on line 12		\$309,804.56	\$319,554.56	
14. Tax computed on amount on line 11		\$0.00	\$0.00	
15. Total tax payable on taxable gifts (Subtract amount on line 14 from amount on line 13)		\$309,804.56	\$319,554.56	
16. Unified credit from Table B		\$192,800.00	\$192,800.00	
17. Unified credit against gift tax allowable for prior quarters		\$0.00	\$0.00	
18. Balance (Subtract amount on line 17 from amount on line 16)		\$192,800.00	\$192,800.00	
19. 20% of amount allowed as specific exemption after Sept. 8, 1976		\$0.00	\$0.00	
20. Balance (Subtract amount on line 17 from amount on line 16)		\$192,800.00	\$192,800.00	
21. Unified credit (Lesser of amount on line 15 or 20)		\$192,800.00	\$192,800.00	
22. Credit for foreign gift taxes		\$0.00	\$0.00	
23. Total (Add amounts on lines 21 and 22)		\$192,800.00	\$192,800.00	
24. Tax due (Subtract amount on line 23 from amount on line 15)		\$117,004.56	\$126,754.56	
25. Tax previously assessed		////////////////////	\$117,004.56	
26. [X] Increase in tax [ ] Decrease in tax		////////////////////	\$9,750.00	

Form 886-A  
(Rev. April 1968) (CG)

## EXPLANATION OF ITEMS

SCHEDULE NO. 88

EXHIBIT

1A

NAME OF TAXPAYER

Lina Yanni

YEAR/PERIOD ENDED  
1988

## Total Gifts of Donor

	Returned	Corrected
1. Total Gifts of Donor	\$927,704.00	\$952,704.00
Increase	25,000.00	

\$952,704.00	\$952,704.00
=====	=====

*Changes  
Subject  
to review*

Total gifts of donor consisted of real estate located at 126-128-130 West 74th Street, New York, New York. The three contiguous properties are improved by a four story, three story and four story, each with basement and cellar brick respectively. The value returned and the determined value per our Valuation Section for each property is as follows:

Description	Value Returned	Value Determined
126 West 74th Street, New York, N.Y.	\$200,000.00	\$225,000.00
128 West 74th Street, New York, N.Y.	675,000.00	675,000.00
130 West 74th Street, New York, N.Y.	250,000.00	250,000.00
	<u>\$1,125,000.00</u>	<u>\$1,150,000.00</u>
Less Mortgage	197,296.00	197,296.00
	<u>\$927,704.00</u>	<u>\$952,704.00</u>
Total Value of Gifts	=====	=====

Total value of gifts are adjusted to reflect the fair market value as of the date of the gift pursuant to section 2512 of the Internal Revenue Code.



**CHASE**

The Chase Manhattan Bank  
National Association  
New York, NY 10081

No. 2724471

1-2  
210

June 12 1991

Official Check

Branch No. 016

Pay to the

order of \*\*\*\*\*Internal Revenue Service\*\*\*\*\*\$ 12,337.64\*\*\*\*\*

C.M.B.N.A. - I 2337 DOLS 64 CTS  
- BR. 16 -

LINA YANNI  
066-56-2165  
Form 709 7988

*Patricia Ann Eddy*  
Authorized Signature

Patricia Ann Eddy -TM  
Print Name

BNT 13 Rev. 8-90

⑈ 2724471⑈ ⑆021000021⑆ 912 6 000018⑈ 24

*Maile*  
*6/13/91*